

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Jimmy Dean Jones, #240330,)
)
Petitioner,)
)
vs.) Civil Action No.: 1:09-951-TLW-SVH
)
)
Michael McCall, Warden, Perry)
Correctional Institution,)
)
Respondent.)
)

ORDER

Petitioner, Jimmy Dean Jones (“petitioner”), filed this civil action, *pro se*, pursuant to 28 U.S.C. § 2254 on April 10, 2009. (Doc. #1). On October 26, 2009, the respondent filed a motion for summary judgment. (Doc. #34). The petitioner filed a response in opposition as well as four supplemental responses. (Docs. #40, #42, #43, #48, #49).

This matter now comes before this Court for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge Shiva V. Hodges to whom this case had previously been assigned. (Doc. #51). In the Report, the Magistrate Judge recommends that the District Court grant the respondent’s motion for summary judgment, and that the District Court deny the petitioner’s motion for continuance and preliminary injunction as moot. (Doc. #51). The petitioner filed objections to the report. (Doc. #55). In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections...The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. However,

the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992)

(citations omitted).

In light of the standard set forth in Wallace, the Court has reviewed, *de novo*, the Report and the objections. After careful review of the Report and objections thereto, it is hereby **ORDERED** that the Magistrate Judge's Report and Recommendation is **ACCEPTED**. (Doc. #51). For the reasons articulated by the Magistrate Judge, the respondent's motion for summary judgment, (Doc. #34), is hereby **GRANTED**, and the petition in this case is **DISMISSED**. The petitioner's motion for continuance and preliminary injunction is denied as **MOOT**. (Doc. #39).

The Court has reviewed this petition in accordance with Rule 11 of the Rules Governing Section 2254 Proceedings and 28 U.S.C. § 2253. Applying the provisions set forth at 28 U.S.C. § 2253 (c), this Court concludes that it is appropriate to issue a certificate of appealability as to all issues raised herein.

IT IS SO ORDERED.

s/Terry L. Wooten
United States District Judge

September 21, 2010
Florence, South Carolina